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In The
Supreme Court of the United States

SYNGENTA CROP PROTECTION, INC., ROBERT BABB, EDEE TEMPLET, and KENNETH A. DEVUN,

Petitioners,

v.

HURLEY HENSON,

Respondent.

On Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

BRIEF OF *AMICUS CURIAE* TRIAL LAWYERS FOR PUBLIC JUSTICE IN SUPPORT OF RESPONDENT

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INTEREST OF *AMICUS CURIAE*

Trial Lawyers for Public Justice (TLPJ) is a national public interest law firm that specializes in precedent-setting and socially significant civil litigation. TLPJ is dedicated to using trial lawyers' skills and strategies to advance the public good. Litigating throughout the federal and state courts, TLPJ prosecutes cases designed to advance consumers' and victims' rights, environmental protection and safety, civil rights and civil liberties, occupational health and employees' rights, the preservation and improvement of the civil justice system, and the protection of the poor and the powerless. TLPJ has filed dozens of *amicus* briefs in support of those objectives.

As part of its effort to ensure the proper working of the civil justice system, TLPJ has fought to preserve injury victims' claims from unconstitutional encroachment, federal preemption, and class action abuse. In fact, TLPJ is the only national public interest law firm that both prosecutes class actions on a broad range of issues *and* has a special project dedicated to fighting class action abuse. One danger posed by large-scale federal class actions involves the temptation for lower federal courts to improperly extend their jurisdiction and interfere with pending state judicial proceedings in the interest of "global peace." We submit this brief to explain why, under our Constitution, laws, and federal system of government, this Court should affirm the judgment of the Court of Appeals and reject petitioners' attempt to manufacture removal jurisdiction.[1]

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[1] Counsel for a party did not author this brief in whole or in part and no person or entity, other than the *amicus curiae*, its members or its counsel, have made a monetary contribution to the preparation or submission of the brief. The parties have consented to the filing of this brief under Supreme Court Rule 37.3(a). Copies of those consents have been filed with the Clerk of the Court.

STATEMENT OF THE CASE

Respondent and others filed a tort suit against petitioners in a Louisiana state trial court in 1993. A putative class action, the suit sought compensation for exposure to chemicals at a particular Louisiana facility. The claims arose under state law and the individual defendants defeated complete diversity of citizenship. In 1994, another putative class action involving similar chemical exposures was filed in an Alabama state trial court. However, that suit ultimately satisfied complete diversity and was removed to an Alabama federal district court later that year. Respondent subsequently intervened in the federal suit, and the Louisiana state court stayed respondent's state suit. J.A. 79. In 1995, the Alabama federal district court simultaneously certified a nationwide class and approved a class-wide settlement. J.A. 88–89. The stipulation of settlement stated that class counsel agreed that respondent's state suit would be dismissed with prejudice. J.A. 36, 38. The court's judgment stated the court would retain jurisdiction over "future performance of, and any claims related to performance of, the Settlement agreement and judgment." J.A. 88.

Three years later, in 1998, class counsel for the federal plaintiffs finally asked the Louisiana state trial court to dismiss respondent's suit. J.A. 75. Respondent's attorney replied that the federal settlement had not settled all of the claims asserted in state court. J.A. 80–85. The trial court stated that it would dismiss respondent's claims regarding one chemical and product, but it granted respondent permission to file an amended petition that would include only unsettled claims. See J.A. 86. Respondent's counsel filed an amended petition in September 1998. J.A. 60.

Dissatisfied with the state court's failure to immediately dismiss the entire suit, petitioners were faced with at least four strategies. The first two were proper; the others were not: (1) argue in state court that the federal decree required dismissal of all claims and, if necessary, appeal;

(2) return to the Alabama federal district court, invoke its ancillary jurisdiction to enforce its prior judgment, see *Kokkonen* v. *Guardian Life Ins. Co. of Am.*, 511 U.S. 375 (1994), and request declaratory relief or an injunction ordering respondent to dismiss the state suit, see *Chick Kam Choo* v. *Exxon Corp.*, 486 U.S. 140, 145–148 (1988); (3) return to the Alabama federal district court, invoke its ancillary enforcement jurisdiction, and request outright removal of the state suit under the All Writs Act, 28 U.S.C. §1651(a); or (4) file a notice of removal in a Louisiana federal district court in accord with the removal statutes, *id.* §§1441 *et seq.*, receive an automatic stay of the state proceedings, see *id.* §1446(d), and assert the All Writs Act and/or ancillary jurisdiction as a cure for jurisdictional and procedural deficiencies.

Petitioners chose strategy (4). On October 13, 1998, they filed a notice of removal in a Louisiana federal district court and a motion for transfer to Alabama, J.A. 58, 65 — even though the parties lacked complete diversity of citizenship, no federal question was presented in the complaint, the state suit commenced years before the notice of removal, and petitioners had not requested a remedy from the federal district court that had approved the settlement.

INTRODUCTION

Although not at historic highs, class actions have become an important part of the federal docket. They can be appropriate and efficient vehicles for resolving disputes involving countless injuries, particularly when each individual injury is relatively small. But there is the potential for abuse at the expense of the "inventory" of individuals who are injured, and those who are not yet injured at all. Class counsel can be too eager to settle on the cheap, provided that attorney fees are sufficiently

attractive.[2] To prevent abuse and to ensure that Congress is involved in any further centralizing of federal litigation, this Court has been sensitive to existing rules and jurisdictional limits. See *Lexecon Inc.* v. *Milberg Weiss Bershad Hynes & Lerach*, 523 U.S. 26, 40 (1998) (extension of multi-district litigation transferee court authority is for Congress); *Ortiz*, 527 U.S., at 842, 861–864; *Amchem*, 521 U.S., at 597, 620–622, 628–629 (refusing to extend Fed. R. Civ. P. 23 despite the district court's attempt to help settle "an asbestos-litigation crisis").

This case likewise involves the scope of federal judicial power over class actions, but after a settlement rather than before. Specifically, petitioners and defendants like them are trying to find a way to route back to federal court disputes over whether a prior federal judgment precludes pending state suits. This case is not simply about the authority of a federal court to interpret and enforce its own decrees, however, because defendants are demanding more. What they want is a removal procedure that will immediately, without prior judicial involvement, oust state courts of jurisdiction over state-law claims against non-diverse defendants when a preclusion defense is alleged — at least if a federal court has retained jurisdiction over a settlement of "complex" litigation. Their preferred removal scheme runs into immediate difficulties, of course, because the removal statutes that Congress enacted forbid it, *Rivet*

[2] See, *e.g.*, J. Coffee, Class Wars, 95 Colum. L. Rev. 1343 (1995), cited in *Amchem Prods., Inc.* v. *Windsor*, 521 U.S. 591, 621 (1997); D. Hensler, Revisiting the Monster, 11 Duke J. Comp. & Int'l L. 179, 189–190 (2001); H. Monaghan, Antisuit Injunctions and Preclusion Against Absent Nonresident Class Members, 98 Colum. L. Rev. 1148, 1149, n. 1, 1155–1156 (1998); see also *Ortiz* v. *Fibreboard Corp.*, 527 U.S. 815, 846–847, and n. 23 (1999). For statistics on federal class action filings dating back to 1972, visit www.classactionreports.com/classactionreports/stats.htm. More recent data indicating an increase in federal filings is available at www.uscourts.gov/judbususc/judbus.html, in Tables X-4 and X-5 of the posted reports. There is no centralized clearinghouse for data on state court class actions.

v. *Regions Bank of La.*, 522 U.S. 470 (1998), and because of the rather dramatic impact it would have on state proceedings and the claimants therein.

In addition to more specific concerns, three general principles counsel affirmance. First, adherence to the principle of separation of powers requires a narrower scope of federal jurisdiction. Federal courts are tribunals of limited rather than general jurisdiction. *Kokkonen*, 511 U.S., at 377. That jurisdiction is confined both by Article III of the Constitution and by acts of Congress. "[C]ourts which are created by written law, and whose jurisdiction is defined by written law, cannot transcend that jurisdiction." *Ex parte Bollman*, 8 U.S. (4 Cranch) 75, 93 (1807) (Marshall, C.J.). Federal jurisdiction thereby requires an affirmative statutory grant from Congress. *Kokkonen*, 511 U.S., at 377. And the burden of persuasion rests with the party asserting jurisdiction. *Ibid.* It may not be manufactured by judicial creativity or litigant convenience.

Second, American federalism mandates respect for state judicial proceedings, even when a "duty of 'hands off' by the federal courts," *Toucey* v. *New York Life Ins. Co.*, 314 U.S. 118, 132 (1941), seems inefficient. Parallel litigation is an accepted consequence of our dual court system and concurrent jurisdiction. "Each system proceeds independently of the other with ultimate review in this Court of the federal questions raised in either system." *Atlantic Coast Line R. Co.* v. *Brotherhood of Locomotive Eng'rs*, 398 U.S. 281, 286 (1970); accord *Kline* v. *Burke Constr. Co.*, 260 U.S. 226, 234–235 (1922). Absent congressionally conferred removal jurisdiction or an exception to the Anti-Injunction Act, neither system may order the other to halt. See *Donovan* v. *City of Dallas*, 377 U.S. 408, 412–414 (1964); *Kline*, 260 U.S., at 234–235.

Third, individuals claiming injury and seeking judicial redress have a legitimate interest in selecting an appropriate forum to adjudicate their grievances, see *World-Wide Volkswagen Corp.* v. *Woodson*, 444 U.S. 286, 292 (1980); *Kulko* v. *Superior Court*, 436 U.S. 84, 92 (1978)

(due process analysis), which should have particular force when wholly state-law claims are asserted in a state court.

There may be legitimate policy arguments for expanding the federal docket to reach more class actions involving state-law claims. Congress is considering legislation along these lines. See H.R. 2341, 107th Cong. (2001); S. 1712, 107th Cong. (2001). But there is no need or authority for this Court to redraw jurisdictional boundaries. The risk of vexatious litigation and erroneous state court decisions under the present system is at least offset by the potential for abuse when grounds for removal are added to the statutes, even if the new grounds are less vague than petitioners' proposal; and it is overwhelmed by respect for Congress as the proper venue for reform proposals, combined with respect for state courts in their duty to adjudicate state-law claims and federal defenses.

SUMMARY OF ARGUMENT

The removal statutes afford particular advantages to those seeking relief, at the expense of orderly state proceedings. But those statutes also impose conditions on removal, at least one of which cannot be satisfied here: a federal defense based on a prior federal decree does not provide the original jurisdiction required for removal under 28 U.S.C. §1441 (Part I.A.). The All Writs Act, petitioners now concede, cannot mend that deficiency (Part I.B.). Nor can ancillary enforcement jurisdiction, which provides federal jurisdiction over certain supplemental enforcement proceedings (Part I.C.).

The analysis can end there, but it is also apparent that the All Writs Act lacks any removal authority. That was surely true as of the Judiciary Act of 1789 (Part II.A.), and later developments and contemporary legal values reenforce the conclusion that the removal statutes govern removal (Part II.B.). Any doubts can be resolved with regard to federalism principles and the adequacy of state court jurisdiction to assess federal defenses to state claims (Part II.C.1.). Finally, the Anti-Injunction Act imposes a

ceiling on any residual removal authority; and although the Act might permit a district court to consider issuing a stay of state proceedings in a case like this, it is a remedy that should always be preferred to the intrusion of petitioners' removal proposal (Part II.C.2.).

ARGUMENT

I. THE REMOVAL STATUTES PROHIBIT REMOVAL UNDER THESE CIRCUMSTANCES.

The question on which this Court granted certiorari tied the outcome of the case to the removal statutes: "Whether the All Writs Act, 28 U.S.C. §1651(a), vests federal district courts with authority to *exercise removal jurisdiction under 28 U.S.C. §1441* . . . ." Pet. for Cert. i (emphasis added). The answer is no, and it is no longer clear that petitioners disagree.

A. Petitioners Invoked the Advantages, But Failed to Satisfy the Conditions, of the Removal Statutes.

The general removal statutes are exceptional for the procedural advantages that they confer upon those seeking relief. Within the confined class of cases to which they apply, Congress' policy is to grant relief first and permit state court plaintiffs to ask questions later. First, the statutes provide that the federal district court in which the notice of removal is filed assumes jurisdiction immediately upon proper filing and service of the notice. 28 U.S.C. §1446(a)–(b), (d). Unlike attempts to remove state criminal prosecutions, §1446(c)(4), the statute does not provide for federal judicial screening as state civil actions are removed. Second, proper filing and service of a removal notice triggers an automatic stay of state civil proceedings. The state court from which the action has been removed "shall proceed no further unless and until the case is remanded." §1446(d); see also §1447(c). Finally and consequently, the onus is on the plaintiff to file a motion seeking

remand to state court. See §1447(c). But cf. *ibid.* (recognizing district courts' obligation to remand for lack of subject matter jurisdiction); §1447(d) (limiting appellate review of remand orders). Invoking the removal statutes is therefore an attractive option for state court defendants like petitioners who desire federal judicial involvement. But cf. §1447(c) (remand orders may include an award of attorney fees).

Yet accompanying these advantages are certain conditions, which must be honored. Any circumvention of these conditions disturbs the federal-state balance that Congress selected, permits federal courts to assume jurisdiction that is the legislature's to give, and inappropriately extinguishes state jurisdiction over state claims. See, *e.g.*, *Shamrock Oil & Gas Corp.* v. *Sheets*, 313 U.S. 100, 108 (1941) (referring to removal as "a right which can only be conferred by Act of Congress"); see also *Oklahoma Tax Comm'n* v. *Graham*, 489 U.S. 838, 841–842 (1989) *(per curiam)*; *Franchise Tax Bd. of Cal.* v. *Construction Laborers Vacation Trust for S. Cal.*, 463 U.S. 1, 10 (1983). As much as or more than any issue of federal jurisdiction, the removal statutes are rightly subject to a rule of strict construction. *Shamrock Oil*, 313 U.S., at 108–109.

Most important for present purposes, only civil actions of which the federal district courts have "original jurisdiction" are potentially removable under §1441(a). See also §1441(b). In other words, §1441 reaches only those state suits that could have been filed in federal district court in the first place. *Caterpillar Inc.* v. *Williams*, 482 U.S. 386, 392–393 (1987). That condition cannot be satisfied here. Diversity of citizenship was incomplete, a federal question did not appear on the face of respondent's well-pleaded complaint, and federal defenses are incapable of satisfying the original-jurisdiction condition in §1441. See *Rivet*, 522 U.S., at 472, 475–478 (distinguishing cases where federal law completely preempts state-law claims and replaces them with federal claims); *Caterpillar*, 482 U.S., at 392–393, 398–399.

A tight analogue is *Rivet*. The state court defendants in that case contended that removal was justified because a prior federal judgment assertedly extinguished the plaintiffs' claims in their entirety. 522 U.S., at 472. But the "fundamental [rule] under currently governing legislation" is that federal defenses cannot provide jurisdiction for removal under §1441. *Id.*, at 478. The same result should obtain in this case. *Rivet*'s holding and congressional policy would be flouted if simple citation of the All Writs Act made any difference; and, as explained below, ancillary enforcement jurisdiction is no answer either. Finally, the *Rivet* Court wisely simplified and hardened the limits on §1441 removal. See *id.*, at 477–478. As such, there can be no exception for prior adjudication of "complex" litigation, or state suits that "threaten the integrity" of prior federal rulings. Brief for Petitioners i. Considering the potential for abuse and the interference with pending state litigation, this Court should maintain relatively clear and clean boundaries for the removal statutes. Petitioners' position sacrifices that clarity along with the principle of limited federal jurisdiction.

B. The All Writs Act Is No Cure for the Absence of Original Jurisdiction.

At times petitioners have suggested that the All Writs Act provides the necessary original jurisdiction. See J.A. 60–62. But petitioners have commendably disavowed any such position here. See Brief for Petitioners 6, 9 (acknowledging that the Act is not an independent basis for federal jurisdiction). The All Writs Act only grants certain writ authority when "in aid of" a federal court's existing jurisdiction conferred by Congress. See, *e.g.*, *Clinton* v. *Goldsmith*, 526 U.S. 529, 534–535 (1999); *Rosenbaum* v. *Bauer*, 120 U.S. 450, 456–459 (1887) (involving removal); *United States* v. *New York Tel. Co.*, 434 U.S. 159, 188, n. 19 (1977) (Stevens, J., dissenting). There can be no rational argument, then, that the All Writs Act somehow repeals the

original-jurisdiction condition for those proceeding under §1441. Removal under that provision was improper.

C. Ancillary Enforcement Jurisdiction Is No Cure.

Petitioners now contend that the Alabama federal district court obtained ancillary enforcement jurisdiction over respondent's Louisiana state suit once the federal settlement was approved and incorporated into the district court's judgment. Even if that argument was properly preserved for review here, it could not justify removal.

Precedent understandably confirms that federal courts possess authority to enforce their judgments. *Peacock* v. *Thomas*, 516 U.S. 349, 356 (1996). Whatever other purposes the federal courts may serve, they must at least be able to adjudicate individual disputes; and adjudication implies resolution with some degree of finality and practical effect. See *Plaut* v. *Spendthrift Farm, Inc.*, 514 U.S. 211, 218–219 (1995); see also *New York Tel.*, 434 U.S., at 188–189 (Stevens, J., dissenting). Federal courts accordingly may retain jurisdiction to exercise this enforcement authority in post-judgment supplementary proceedings. *Peacock*, 516 U.S., at 356–357; see *Kokkonen*, 511 U.S., at 379–381.

But these concepts fall far short of this case. Ancillary "enforcement" jurisdiction permits a federal court to entertain *enforcement* proceedings.[3] Thus the Alabama

[3] See, *e.g.*, *Peacock*, 516 U.S., at 356–357; *Kokkonen*, 511 U.S., at 381 (posing a hypothetical in which the federal district court would have had jurisdiction "to enforce" the settlement agreement); *Dugas* v. *American Surety Co. of N.Y.*, 300 U.S. 414, 420–422, 427–429 (1937) (involving a supplemental bill to enjoin a litigant from further prosecuting an unremovable state suit that would have imposed liability foreclosed by prior federal interpleader decrees); *Local Loan Co.* v. *Hunt*, 292 U.S. 234, 238–242, 244 (1934); *Supreme Tribe of Ben Hur* v. *Cauble*, 255 U.S. 356, 357–358, 367 (1921); *Dietzsch* v. *Huidekoper*, 103 U.S. (13 Otto) 494 (1880); see also *New York Tel.*, 434 U.S., at 171–178;

(Continued on following page)

federal district court retained jurisdiction to consider a motion by petitioners for declaratory relief, or for an injunction ordering respondent to dismiss his state suit. But petitioners incorrectly equate federal jurisdiction over efforts to *enforce* a federal court's judgment with federal jurisdiction over lawsuits that happen to *violate* that judgment. Whatever the arguable limits to ancillary enforcement jurisdiction, respondent's state suit is obviously not an enforcement action. That the federal district court in this case might have issued orders to halt state litigation does not convert that federal tribunal into a state-court substitute. Under petitioners' theory, could respondent or other parties to the settlement now choose to file non-diverse state-law exposure suits against the federal defendants in Alabama federal district court? If a federal settlement precludes certain administrative claims or requires certain executive branch actions, is the district court then permitted to appropriate those claims or itself discharge those duties? Cf. *Missouri* v. *Jenkins*, 495 U.S. 33, 50–51, 55 (1990) (addressing district court authority to order local property tax increases). The answer must be no.

That petitioners sought *removal* of the state suit only makes matters worse. Neither petitioners nor their *amicus* identify precedent for solely ancillary removal jurisdiction. There is no such beast. For the reasons just stated, §1441(a)'s original-jurisdiction demand could not have been satisfied. Ancillary enforcement jurisdiction at most permits the Alabama federal court to consider whether to halt, not whether to adjudicate, a state suit over which it otherwise lacks jurisdiction.

id., at 188 (Stevens, J., dissenting); *Julian* v. *Central Trust Co.*, 193 U.S. 93, 112–114 (1904); *Root* v. *Woolworth*, 150 U.S. 401, 411–412 (1893); *Milwaukee & Minn. R.R. Co.* v. *Soutter*, 69 U.S. (2 Wall.) 609, 631–635 (1865).

In addition, §1441 is best read to prohibit removal if subject matter jurisdiction depends on a separate federal suit that is already pending in a particular federal district court.[4] It is the "civil action brought in a State court" over which the district courts must have "original jurisdiction." §1441(a). But by definition ancillary jurisdiction is dependant rather than "original" in the sense that the statute uses that term. As well, §1441(a) demands extant original jurisdiction in "the district courts," plural. Accord §1441(b). That phrasing at least implies that the state suit must fall within the subject matter jurisdiction of any federal district court. In contrast, the ancillary enforcement jurisdiction decisions indicate that such jurisdiction resides, if at all, in the one district court with a decree to enforce. See, *e.g.*, *Local Loan*, 292 U.S., at 239. And in cases like this, where the state suit was filed in a place outside the geographic boundaries of the federal district court with asserted ancillary jurisdiction, §1441 removal would require the local federal district court to assume jurisdiction that even defendants would not argue has been retained. See §1441(a) (directing removal to "the district court" (singular) "for the district and division embracing the place where such action is pending"); §1446(a). Transfer can be requested, as it was here. But

[4] This conclusion is regularly followed by lower federal courts in an analogous context: attempts to remove a state suit on the theory that the suit falls within the supplemental jurisdiction attendant to an already pending federal suit. 28 U.S.C. §1367; see, *e.g.*, *Henson* v. *Ciba-Geigy Corp.*, 261 F.3d 1065, 1068, n. 3 (CA11 2001) (case below); *Ahearn* v. *Charter Township of Bloomfield*, 100 F.3d 451, 456 (CA6 1996); *Sebring Homes Corp.* v. *T.R. Arnold & Assocs.*, 927 F. Supp. 1098, 1101–1102 (N.D. Ind. 1995); *In re Estate of Tabas*, 879 F. Supp. 464, 467 (E.D. Pa. 1995); see also *McClelland* v. *Longhitano*, 140 F. Supp. 2d 201, 202–203 (N.D.N.Y. 2001) (state court defendants filed a federal action and simultaneously sought removal under §1367 of the pending state suit); cf. *City of Chicago* v. *International College of Surgeons*, 522 U.S. 156, 165 (1997) (§1367(a) applies when other, federal claims are removed). But see *Cohen* v. *Reed*, 868 F. Supp. 489, 494 (E.D.N.Y. 1994) (nevertheless remanding).

that *exercise* of judicial authority is hardly a substitute for *jurisdiction* to do so in the first place. Cf. *Steel Co.* v. *Citizens for a Better Env't*, 523 U.S. 83, 93–95 (1998) (rejecting hypothetical jurisdiction).

Recognizing a difference between jurisdiction to consider enforcement measures and jurisdiction over state suits alleged to violate prior federal decrees is not splitting hairs. The former maintains the traditional authority of the federal courts to adjudicate requests for relief when otherwise permitted by law. But under petitioners' theory, mere allegations of preclusion in a removal petition can trigger immediate and wholesale interference with ongoing state-court business. Yet defendants cannot be trusted to assert only valid enforcement claims. Granted, in some situations the statutorily authorized grounds for removal may be doubtful. But that situation was one that Congress created. Judicially minted and amorphous extensions of removal jurisdiction, whether under ancillary enforcement jurisdiction or otherwise, should not be tolerated.

II. THE ALL WRITS ACT DOES NOT PROVIDE ANY REMOVAL AUTHORITY.

Petitioners' revision of the question presented does not refer to the removal statutes at all, see Brief for Petitioners i, and their new question might better fit their current theory of the case. Petitioners now assert that the All Writs Act is an additional statutory mechanism with which federal courts may obtain removal jurisdiction over suits within some federal court's ancillary enforcement jurisdiction — at least when that court retained post-judgment jurisdiction over "complex" litigation. As discussed above, federal district courts do not possess ancillary enforcement jurisdiction over state lawsuits that allegedly violate prior decrees. But in addition to that jurisdictional deficiency, there is no unwritten removal mechanism in §1651(a) or anywhere else.

As an initial matter, it is not clear which portions of the removal statutes petitioners are willing to follow and which would be superseded by the All Writs Act. In fact, the All Writs Act was not the (only) "mechanism" that they used. Petitioners relied on the grant of removal jurisdiction to the local federal district court in Louisiana under §1441(a) and they filed their removal notice there, see §1446(a); but they do not explain why that particular court possessed jurisdiction. See Argument Part I.C., *supra*. Likewise, petitioners enjoyed the automatic stay of state proceedings in §1446(d); but they do not explain how defendants in their position can ever file a timely removal notice under §1446(b). Cf., *e.g.*, §§1441(d), 1442a (express exceptions to the timing provision in §1446(b)). Nor do we know whether §1447(c) will govern the procedure for remand motions and orders for attorney fees, or whether such remands will be appealable despite §1447(d).

Regardless of the procedural edifice that petitioners would have federal courts fabricate to answer such questions, the removal statutes represent the sum total of the judiciary's removal authority. This was true from the beginning.

A. Evidence of Original Intent Bars Removal.

We can be quite certain that the initial grant of residual writ authority in 1789 did not include unwritten removal authority. The first Judiciary Act exercised Congress' then-controversial authority to establish lower federal tribunals,[5] and granted all federal courts "power to

[5] See R. Fallon, Jr., *et al.*, Hart and Wechsler's The Federal Courts and the Federal System 19–20, 28–29, 31 (4th ed. 1996) (hereinafter Hart & Wechsler); F. Frankfurter & J. Landis, The Business of the Supreme Court 2, 4, 11–12 (1928); C. Warren, New Light on the History of the Federal Judiciary Act of 1789, 37 Harv. L. Rev. 49, 53–57, 61–70, 81, 90–92, 119–127, 130–132 (1923).

issue writs of *scire facias*, *habeas corpus*, and all other writs not specially provided for by statute, which may be necessary for the exercise of their respective jurisdictions, and agreeable to the principles and usages of law." An Act to establish the Judicial Courts of the United States, ch. 20, §14, 1 Stat. 73, 81–82 (1789).

At the very same time, the Judiciary Act also created federal removal jurisdiction, *id.*, §12, 1 Stat. 79–80, an innovation within our unique system of co-existing state and federal power. As now, the founding era removal jurisdiction included several significant limitations, which are understandable in light of its novelty and intrusion into state prerogatives. Thus removal was confined to a specified class of cases, such as those involving a plaintiff suing an out-of-state defendant in the plaintiff's home state if the amount in controversy exceeded $500. *Id.*, at 79. As well, removal was proper only to the local circuit court (excepting Maine and Kentucky, which had no separate circuit courts), rather than to a district court or to this Court. *Ibid.* Removal premised on federal questions was not authorized at all.

It is inconceivable that removal authority beyond §12 was lodged in §14. The former provision specifically and meticulously addressed the subject of removal, the classes of cases eligible therefor, and the procedure by which removal would be effectuated. Having described the eligible cases, Congress could not have intended the same Act to extend this novel ouster of state jurisdiction by mere ambiguity. Cf. *id.*, §§9, 11, 1 Stat. 76–79 (providing instances of exclusive jurisdiction in the lower federal courts). Furthermore, if any removal authority existed in §14, could removal have been premised on a federal question despite Congress' decision to withhold general federal question jurisdiction (whether by removal or otherwise)? And which federal courts could have exercised it and by what procedure? The All Writs authority was granted to every federal court, while Congress made

conscious decisions to restrict removal venue and procedure. Nothing in the original statute or its context suggests that these legislative choices could be trumped by the residual writ authority included in the same piece of legislation. Indeed our system survived for nearly two centuries without a single federal court assuming removal authority under the All Writs Act. See L. Hoffman, Removal Jurisdiction and the All Writs Act, 148 U. Pa. L. Rev. 401, 401–402 (1999).

B. Contemporary Law Confirms the Conclusion.

No intervening event suggests that All Writs removal authority has sprouted since 1789. The All Writs statutory phrasing has changed only slightly over that period; since 1948 it has granted federal courts authority to issue "all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law." 28 U.S.C. §1651(a); see *Pennsylvania Bureau of Corrections* v. *United States Marshals Serv.*, 474 U.S. 34, 40–42 (1985) (concluding that the 1948 recodification did not "mark a congressional expansion of the powers of federal courts to authorize issuance of any 'appropriate' writ").

As for removal, over time Congress has expanded and contracted the authority depending on contemporary necessities. Responding to acute threats to federal power while cognizant of the impact on state and federal dockets, the Legislative branch has been the prime arbiter of removal authority. And this Court's consideration of removal authority has been bounded by those statutes. See, *e.g.*, *Mesa* v. *California*, 489 U.S. 121, 125–126, 135, 139 (1989) (addressing federal officer removal); *Caterpillar*, 482 U.S., at 399 (addressing §1441's original-jurisdiction condition); see generally Hart & Wechsler, *supra*, at 951–952, 1615–1616 (providing a history of legislative amendments to the removal statutes).

The better conclusion, therefore, is that Congress has exhausted the mechanisms for removal by statute. The United States Code is now littered with statutory provisions expressly addressing removal of cases from state to federal court in a variety of circumstances. The All Writs Act is not one of them. See, *e.g.*, 9 U.S.C. §205; 12 U.S.C. §§632, 1819(b)(2)(B)–(D); 22 U.S.C. §286g; 28 U.S.C. §§1441–1452, 2679(d)(2)–(3); 39 U.S.C. §409(a). As significant, petitioners cite no case in which this Court has implied removal authority from a statute that did not expressly provide for it. Accord *Oklahoma Tax Comm'n*, 489 U.S., at 841 ("Congress has expressly provided by statute for removal when it desired federal courts to adjudicate defenses based on federal immunities").

With congressional policy ascertained, All Writs analysis must end. The All Writs Act cannot trump congressional intent to limit removal authority. And, in addition, writs otherwise "'covered'" by statute are not available under §1651(a). *Carlisle* v. *United States*, 517 U.S. 416, 429 (1996) (quoting *Pennsylvania Bureau*, 474 U.S., at 43); see also *Roche* v. *Evaporated Milk Ass'n*, 319 U.S. 21, 29–32 (1943); *United States* v. *FMC Corp.*, 84 S.Ct. 4, 5–6, 8 (1963) (Goldberg, J., in chambers); cf. *United States Alkali Export Ass'n* v. *United States*, 325 U.S. 196, 202–204 (1945) (enforcing by writ a congressional policy limiting federal jurisdiction). "Where a statute," let alone a bevy of them, "specifically addresses the particular issue at hand, it is that authority, and not the All Writs Act, that is controlling." *Pennsylvania Bureau*, 474 U.S., at 43.

Finally, federalism concerns should resolve any doubts against All Writs authority. Not only are the removal statutes sufficiently comprehensive to foreclose supplementation, but judicial expansion of removal authority improperly impinges on state judicial business. Removal does not just obstruct state courts in their obligations to timely adjudicate state-law claims. It utterly and (under

§1446(d) or some phantom All Writs companion) immediately deprives them of jurisdiction. Congress and the Court are well aware of that consequence, and in defining the scope of the removal statutes both institutions have respected the interests of state judiciaries and their claimants.[6] An alleged "crisis" is no occasion for the judiciary to re-mark boundaries on its own power. See *Lexecon*, 523 U.S., at 40; *Amchem*, 521 U.S., at 628–629.

There may be no simple and comprehensive way to state exactly when resort to the All Writs Act is appropriate. But essential elements in the equation must include deference to congressional choices and respect for state judiciaries. Petitioners' argument devalues both.

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[6] Authorities cited by petitioners and their *amicus* do not confront these concerns. See, *e.g.*, *New York Tel.*, 434 U.S., at 161 (pen-register order to an in-state telephone company); *FTC* v. *Dean Foods Co.*, 384 U.S. 597 (1966) (preliminary injunction against private parties' merger in part to preserve status quo for agency resolution and subsequent judicial review); *La Buy* v. *Howes Leather Co.*, 352 U.S. 249 (1957) (supervisory authority over lower federal courts); *Adams* v. *United States ex rel. McCann*, 317 U.S. 269, 272–274 (1943) (habeas corpus after a federal conviction); *United States* v. *Morgan*, 346 U.S. 502 (1954) (coram nobis after a federal conviction); *McClellan* v. *Carland*, 217 U.S. 268 (1910) (certiorari to the federal courts of appeals); cf. *Carlisle*, 517 U.S., at 429 (recent treatment of coram nobis in light of the modern rules of criminal procedure); *Sampson* v. *Murray*, 415 U.S. 61, 76–78 (1974) (distinguishing *Dean Foods*). Obviously the All Writs Act may permit some interference with state interests. See *Harris* v. *Nelson*, 394 U.S. 286, 288–292, 299 (1969) (supplementing expressly granted habeas jurisdiction to adequately assess collateral constitutional claims to liberty). But see 28 U.S.C. §2283 (limiting authority to interfere with pending state suits); Argument Part II.C.2., *infra*. Still, a federal court's legitimate power to issue creative writs must be at low tide when beset by a combination of federalism and separation-of-powers concerns — especially where there are established alternative avenues for seeking more traditional and practically effective relief. See Argument Part II.C., *infra*.

C. Removal Is Unnecessary to Protect the Federal Judiciary Or Defendants' Interests.

Petitioners and their *amicus* attempt to convert the vice of statutory limits into a virtue. They believe that the conditions in the removal statutes actually justify All Writs removal, because the exact relief sought cannot otherwise be obtained.

Precedent indicates that All Writs relief is available only if "necessary" in some sense, and so it is plainly *un*available if other "adequate" remedies exist. See *Clinton*, 526 U.S., at 537; *Allied Chem. Corp.* v. *Daiflon, Inc.*, 449 U.S. 33, 35 (1980) *(per curiam)* (mandamus to an inferior federal tribunal is barred if the requesting party has any other adequate means to obtain the requested relief); see also *New York Tel.*, 434 U.S., at 175 (arguing necessity from the *court's* perspective); *Dean Foods*, 384 U.S., at 604. But litigant need and restrictions on other statutory authority cannot be a *sufficient* condition for relief. That would be a recipe for disregard of congressional will. Absent a constitutional violation, All Writs relief must be prohibited when Congress so intends. As shown above, the best reading of the removal statutes is that the All Writs Act has been appropriately confined by Congress. *New York Tel.*, 434 U.S., at 172–173.

Moreover, the All Writs Act is not triggered whenever a litigant cannot obtain elsewhere the precise remedy that he has requested. Rough substitutes can bar recourse to the All Writs Act. See *Clinton*, 526 U.S., at 537–540; *Allied Chem.*, 449 U.S., at 36. That petitioners cannot remove respondent's state suit should be irrelevant considering the sole purpose for which they seek relief: to halt a state suit based on a prior federal judgment. Even if petitioners are correct on the merits of their preclusion arguments, there is absolutely no need — from the perspective of either the litigants or of the federal courts — for removal to achieve the objective.

1. State-court defense. Most important, state courts retain the ability and duty to fairly adjudicate defenses like those asserted by petitioners. Indeed, Congress and precedent favor that course to unauthorized removal. See *Rivet*, 522 U.S., at 477–478. State courts are entirely capable of resolving alleged conflicts between federal judgments and pending state suits. They are just as obligated to effectuate federal law as are federal courts, and this Court ordinarily presumes that state courts will follow rather than flout federal law. See, *e.g.*, *Tafflin* v. *Levitt*, 493 U.S. 455, 458 (1990); *Chick Kam Choo*, 486 U.S., at 149–150; *Pennzoil Co.* v. *Texaco, Inc.*, 481 U.S. 1, 15–17 (1987); *Stone* v. *Powell*, 428 U.S. 465, 493–494, n. 35 (1976); *Amalgamated Clothing Workers of Am.* v. *Richman Bros.*, 348 U.S. 511, 518 (1954). Unlike the situation in cases such as *New York Telephone*, 434 U.S., at 175, and *Dean Foods*, 384 U.S., at 599–600, the underlying controversy turns on state law and a state judicial forum has already acquired jurisdiction — with which it is able to ensure that federal law is vindicated.

While there are legitimate arguments that the court issuing a judgment is the most efficient place to consider its scope, such concerns have never been parlayed into exclusive federal jurisdiction. See *Parsons Steel, Inc.* v. *First Ala. Bank*, 474 U.S. 518, 524–25 (1986) (rejecting an anti-suit injunction where the state court had already denied preclusion); see also *Kokkonen*, 511 U.S., at 381; *Atlantic Coast Line*, 398 U.S., at 287. Even when a dispute over a judgment is close enough in time to the prior adjudication to warrant a presumption that the first court is better prepared than a second, but cf. Brief of Product Liability Advisory Council, Inc. (PLAC) as *Amicus Curiae* 26–29 (posing questions about back-end opt-outs), different judicial systems regularly interpret the preclusive scope of judgments entered by others. And the preclusive effect of a federal district court's judgment when sitting in diversity is only technically a matter of federal common law; the actual rule of decision will almost certainly

incorporate state preclusion rules. See *Semtek Int'l Inc.* v. *Lockheed Martin Corp.*, 531 U.S. 497, 508–509 (2001).

Petitioners are free to defend themselves in state court, and that is no punishment. Fear that state courts will not follow federal law is no ground for removal. *Chicago & A.R. Co.* v. *Wiggins Ferry Co.*, 108 U.S. 18, 24 (1883).

2. Anti-suit injunctions. Based on the argument above, the Court need not consider the authority of the Alabama district court to issue an anti-suit injunction. But the possibility of an injunction and the presence of the Anti-Injunction Act can only undermine the argument for All Writs removal.

First, any authority to remove a case outside of the removal statutes must not be any broader than the authority to issue a stay of state proceedings. To make removal effective, a stay of state proceedings is required (or at least that is what defendants are agitating for). Yet Congress has imposed express limits on such stays in the Anti-Injunction Act. 28 U.S.C. §2283. Although there are a variety of additional restrictions on anti-suit injunctions,[7] the demands of the Anti-Injunction Act must be satisfied or there is no authority to interfere with pending state proceedings "regardless of how extraordinary the particular circumstances may be." *Mitchum* v. *Foster*, 407 U.S. 225, 229 (1972); see, *e.g.*, *Chick Kam Choo*, 486 U.S., at 146; *Atlantic Coast Line*, 398 U.S., at 286–87 (the bar applies even when an injunction is directed at a party rather than a state court). "[S]ince the statutory prohibition against such injunctions in part rests on the

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[7] These include personal jurisdiction, due process, abstention, and equitable discretion to deny relief. See, *e.g.*, *Ortiz*, 527 U.S., at 846–848; *Phillips Petroleum Co.* v. *Shutts*, 472 U.S. 797, 811–812 (1985); *Younger* v. *Harris*, 401 U.S. 37, 43–45 (1971); *Zenith Radio Corp.* v. *Hazeltine Research, Inc.*, 395 U.S. 100, 110 (1969); *Local Loan*, 292 U.S., at 241–242; Monaghan, *supra*, at 1149–1155, 1187–1191; see also Fed. R. Civ. P. 65(d).

fundamental constitutional independence of the States and their courts, the exceptions should not be enlarged by loose statutory construction." *Atlantic Coast Line*, 398 U.S., at 287; accord *Chick Kam Choo*, 486 U.S., at 146. Doubts about the propriety of an injunction must be resolved in favor of permitting the state courts to move forward without delay. *Atlantic Coast Line*, 398 U.S., at 297.

In cases like this, the defendants' rationale for removal authority (that the state suit is purportedly precluded by a prior federal decree) may establish authority to issue an anti-suit injunction. Section 2283 permits federal courts to consider whether to issue an anti-suit injunction that is "necessary to protect or effectuate the court's judgment." *Chick Kam Choo*, 486 U.S., at 146. This relitigation exception has been narrowly construed: "the claims or issues which the federal injunction insulates from litigation in state proceedings [must] actually have been decided by the federal court," and an injunction can rest only on what the federal court's prior order actually said, not on what it intended to say. *Id.*, at 148. Nevertheless, a preclusion argument like petitioners' might satisfy the relitigation exception; and if that argument fails on its merits, then not even petitioners would contend that removal is authorized. On this logic, petitioners' *amicus* contends that a meritorious preclusion argument triggers both injunctive and removal authority, and district courts should be left with discretion to choose between them.

This argument fails for several reasons. First, in PLAC's view, defendants seeking All Writs removal are apparently entitled to an automatic stay of state proceedings, without prior judicial oversight, upon filing of a removal notice and allegation of preclusion (at least after settlement of "complex" federal litigation). Cf. §1446(d). The "choice" a district court would face after finding that a preclusion defense is meritorious, therefore, would *not* be between an anti-suit injunction and removal, but between

remand with an anti-suit injunction and dismissal. Assuming complete preclusion, the only purpose for remand would be to test whether the state court can obey a federal diktat. And in those cases where the defendant's preclusion defense is *not* meritorious, neither removal nor injunction will be authorized, and so a straight remand will be compelled. But in all events the defendant will have succeeded in obstructing state adjudication and the plaintiff's valid forum choice, based on a federal defense. That is not the way the deck has been stacked by Congress or this Court. See, *e.g.*, *Rivet*, 522 U.S., at 477–478; *Parsons Steel*, 474 U.S., at 524–25.

That aside, removal and anti-suit injunctions are *not* equally available choices. As argued above, federal courts lack subject matter jurisdiction over state suits like this and the All Writs Act lacks any removal authority. In addition, the Anti-Injunction Act itself suggests that injunctions are congressionally preferred to an expanded removal authority. In amending the Anti-Injunction Act into its present form, Congress assessed the interests at stake and the argument for preserving a federal forum for preclusion defenses. See *Toucey*, 314 U.S., at 132, 141 (pre-amendment decision refusing to acknowledge a relitigation exception absent statutory authorization). Congress well could have altered the removal statutes too, or made federal jurisdiction over these defenses exclusive, but it did not. Moreover, removal is the greater intrusion into state judicial proceedings, especially if a mere notice of removal ousts the state court of authority to proceed, or if the state plaintiff's case ends up only partly precluded. Removal deprives state courts of all authority over a case, while anti-suit injunctions are ordinarily issued to litigants and can (indeed must) be targeted to prevent relitigation of only those issues previously adjudicated. See *Chick Kam Choo*, 486 U.S., at 148. So far as we can tell, petitioners envision wholesale removal of entire state cases while a federal district court considers whether all or any of the state case is precluded.

Petitioners' *amicus* directs attention to federal settlement agreements that contain so-called "back-end opt-outs" as an example where removal would create less federal-state friction than anti-suit injunctions. Brief for PLAC 25–29. Even assuming that such restrictions on class members are valid, they do not justify removal. First of all, the friction-*free* alternative is to permit state proceedings to progress unhindered by either removal *or* injunction. Federal courts are at liberty to withhold All Writs relief, particularly if a state forum exists to adjudicate preclusion defenses. Second, the hypothetical situation presented involves state claims that are only partly precluded by a federal settlement; some of the claims will go forward. In what sense is it more intrusive to order an amendment of claims than to assert exclusive jurisdiction over an entire state case (one that lacks an independent basis of federal subject matter jurisdiction) only to remand the remainder of the case? Shuttling cases back and forth is no boon to federalism either.[8] Furthermore, insofar as PLAC's hypothetical involves injuries and claims that arise long after a federal settlement, the rationale for federal adjudication is undercut. Long lags between judgment and dispute make it less clear that a federal court is the better arbiter of aging documents.

Indeed an assurance that a federal court will arbitrate all disputes over the meaning of its decrees risks excessive tolerance for vagueness in drafting those decrees. Particularly when the rights of future victims are at stake, federal settlements must be absolutely plain to any reader. Taking care up front will better enable state courts to easily and fairly adjudicate preclusion defenses. Moreover, absent

[8] It is possible that PLAC believes state cases should remain in federal court even after they are determined to be partly preserved. But that would be extraordinary. At that point, the rationale and necessity for federal jurisdiction would have vanished even under PLAC's position. Federal courts would be adjudicating *un*precluded state law claims, while wholly lacking original jurisdiction.

and unnamed class members have a right to collaterally challenge a purported judicial resolution of their claims. See Monaghan, *supra*, at 1149–1150, and n. 4, 1185–1187, 1197; see also *Ortiz*, 527 U.S., at 846–848. An opportunity for non-participants to collaterally challenge in Court B the fundamental fairness of Court A's proceedings is a useful check on judicial authority and on any urge to sacrifice individual rights while clearing dockets. PLAC's proposal would effectively eliminate this check on federal class actions.[9]

[9] In the class-action context, some lower federal courts have become willing to issue injunctions against state suits before judgment and to promote the chances of reaching a global federal settlement. See PLAC Br. 24, n. 7. But see *In re Federal Skywalk Cases*, 680 F.2d 1175, 1182–1183 (CA8), *cert. denied*, 459 U.S. 988 (1982); *In re Glenn W. Turner Enterprises Litig.*, 521 F.2d 775, 780 (CA3 1975). These pre-judgment injunctions are a matter of intense controversy within the practicing bar. In TLPJ's view, they conflict with the narrow, traditional understanding of what is "necessary in aid of [a district court's] jurisdiction." 28 U.S.C. §2283; see *Atlantic Coast Line*, 398 U.S., at 295–296 (citing *Kline*); *Kline*, 260 U.S., at 229–230 (distinguishing *in personum* from *in rem* jurisdiction); see also *Vendo Co.* v. *Lektro-Vend Corp.*, 433 U.S. 623, 641–643 (1977) (plurality opinion of Rehnquist, J.); *County of Imperial* v. *Munoz*, 449 U.S. 54, 60, n. 4 (1980). These injunctions have little to do with the federal judiciary's ability to adjudicate the cases properly before them, but they seriously interfere with state courts' ability to do the same. But far more importantly, the necessary-in-aid-of-jurisdiction exception to the Anti-Injunction Act is not before the Court, and we ask that the excursions of the lower courts receive no endorsement whatsoever in the Court's decision.

CONCLUSION

The judgment of the Court of Appeals should be affirmed.

Respectfully submitted,

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